IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 342 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI KANJI THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 342 of 1999

MR CL SONI for Petitioner No. 1

MR KANTILAL S PATEL for Petitioner No. 1

MR BD DESAI PUBLIC PROSECUTOR for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 31/01/2002

ORAL JUDGEMENT

#. The present Revision Application under Section 397 read with 401 of the Criminal Procedure Code, 1973 (for

short "the Code") has been filed by the petitioner above named who was original accused No.1 before the trial Court.

#. The petitioner came to be tried before the learned Metropolitan Magistrate Court No.10 in Criminal Case No.630/1993 alongwith the Gajraben and Maniben as his co-accused for the offences punishable under Section 326, 504 and 114 of the I.P.C. as well as for the offence punishable under Section 135 of the Bombay Police Act. It was alleged against him that on 8.3.1993 at about 17:45 hours, he voluntarily caused grievous hurt to Kanubhai by means of knife. It was also alleged that other accused persons had abated the present petitioner in committing the said offence. It was also alleged that the petitioner held knife in contravention of the notification of the competent authority under the Bombay Police Act and committed the aforesaid offence. The injured Kanubhai was taken to the hospital. FIR was filed and after investigation charge-sheet was also filed. Charge was framed and the petitioner and other accused persons pleaded not guilty and, therefore, evidence was recorded. After the conclusion of trial; the learned Magistrate found that the petitioner and other accused persons were guilty and, therefore, he convicted and sentenced the present petitioner for the offence punishable under Section 326 of the I.P.C. and directed him to suffer R.I. for 1 year. He was also directed to pay fine of Rs.300/- and in default of payment of fine the petitioner was required to undergo further S.I. for 15 days. The petitioner was acquitted for the offence punishable under Section 504 read with 114 of the I.P.C. However, for the offence punishable under Section 135 of the Bombay Police Act, he was convicted and was directed to suffer S.I. for 1 month and to pay fine of Rs.100/- in default of payment of fine, he was required to undergo further S.I. for 10 days. Other accused persons were also convicted but they are not the petitioners before this Court and, therefore, it is not necessary to refer to the order passed to them.

#. Feeling aggrieved by the said judgment and conviction order, the petitioner and other co-accused persons preferred Criminal Appeal No.43/1997 before the City Sessions Court at Ahmedeabad. In the said appeal it appears that the appeal was partly allowed and conviction and sentence of the petitioner in respect of the offence punishable under Section 135 of the Bombay Police Act was set aside and the conviction and sentence of the offence punishable under Section 326 of the I.P.C. was confirmed. We are not concerned with the remaining two

accused persons with whom the Sessions Court had dealt the said Criminal Appeal.

#. Feeling aggrieved by the said judgment and conviction order the petitioner has preferred this Criminal Revision Application before this Court. It has been mainly contended here that there is patent illegality in the appreciation of evidence by the trial Court as well as by the Sessions Court. That the independent witnesses were not examined and the Courts below were not justified in relying upon the sole testimony of the injured Kanubhai and his wife Babuben. That on the whole the judgments and order are illegal and perverse and deserve to be set aside. The petitioner has, therefore, prayed that present Revision Application be allowed and the judgment and conviction order recorded by the two Courts below be set aside.

#. I have heard the learned advocates for the parties and have perused the papers. The learned advocate for the petitioner has argued at length that the evidence of petitioner and his wife Babuben has not been supported by other witnesses present at the incident. Therefore, the two courts below were not justified in relying upon the evidence of those interested witness only. The Courts below have dealt with this issue at length. More over, there is no law requiring that there must be corroboration of independent eye witnesses to the injured witness and the witnesses interested in the said injured eye witness. It is not necessary that there should be a particular number of witnesses for the proof of an offence. The trial Court as well as the Sessions Court both have found that the evidence of Kanubhai and his wife Babuben was acceptable and have also found that the said evidence was supported by the medical evidence and, therefore, the two Courts below have found it proper to rely upon their evidence in order to hold the petitioner guilty for the offences punishable under Section 326 of the I.P.C. and this cannot be said to be an illegality committed by the two Courts below.

#. It is next contended that the P.I. Shri Patel has deposed at Ex.19 before the trial Court that some witnesses has told him no offence was committed by the petitioner, and by other accused persons, and yet their statements were not recorded and no such witness was examined, though their presence was disclosed in the FIR. In fact, the above statement made to P.I. Shri Patel at Ex.19 by some witnesses as deposed by the P.I. was not a admissible evidence. What ever is gathered by the Investigating Officer during the course of investigation

would not be admissible in evidence unless the statements of witnesses have been recorded and the witnesses have been brought to the Court as witness. Therefore, if some statements were made to the I.O. as stated by him, then the evidence of Shri Patel Ex.19 to that extent would not be admissible evidence. On this point, we may refer to a decision in a case of Hamidulla Bismillakhan Navab vs. State of Gujarat, reported in 1988 Criminal Law Journal (Guj.) 981.

#. Even otherwise it happens when there are many witnesses present to witness an event, some of them have some interest in favour of the accused and, therefore, those witnesses may not come forward to support the prosecution case and some of them may come with a case that no such incident had taken place at all. Again it is a matter of appreciation of evidence and if after appreciation of evidence it is found that the injured, eye witness and the person interested in such a witness is sufficient to hold the accused person guilty then the Courts are not prevented from convicting such an accused person. Therefore, non-examination of such witness will not be fetal to the case of prosecution. Same way even if the statements of such witnesses are not recorded, it cannot be treated to be a fatal on the case of prosecution.

#. It is next contended that the prosecution had examined panch witnesses and the panch witnesses have not supported the case of the prosecution. Here also it is a matter of appreciation and if some witnesses have not supported the case of the prosecution, it may not be illegal to rely upon the evidence of some witness to convict the accused person.

#. Therefore, it cannot be aid that some illegality was committed by the two Courts below in relying upon the evidence of Kanubhai and his wife Babuben.

##. It is also contended that the doctor who had examined and treated Kanubhai was not examined as a witness before the trial Court by the prosecution. It is not much in dispute that the doctor who had examined Kanubhai was not available at that point of time and had gone to Bihar, therefore he was not available as a witness for being examined before the trial court at the trial.

##. It is a matter of record that Dr. Virendra Shah Ex.17 had given evidence on the basis of papers produced

on record and, therefore, when those papers and oral evidence of Dr.Virendra Shah had supported the prosecution case then it cannot be said that the evidence of Kanubhai was not supported by the medical evidence.

##. After all two Courts below have recorded concurrent findings of fact that Kanubhai sustained grievous hurt by means of knife at the hands of the petitioner. It is a matter of record that grievous hurts have been caused to the said witness at his left side of his chest, on the left side of his abdomen and on his waist as well as on the right hand. The description of the injuries sustained by him has been disclosed during the course of the oral testimony of Dr.Virendra Shah and that has been reproduced by the learned Magistrate during the course of his judgment which shows that the present petitioner had been injured and injuries were grievous in nature and, therefore, when the knife was used and grievous hurts have been caused, offence committed by the petitioner would be one punishable under Section 326 of the I.P.C. Therefore, it has to be held that the petitioner is proved to have committed an offence punishable under Section 326 of the I.P.C. In other words it is proved on record that the petitioner had voluntarily caused grievous hurts to the injured witness by means of a deadly weapon i.e. knife.

##. As said above this is a Revision Application and the powers, functions and jurisdiction of the Court exercising revisional jurisdiction are very limited. Reappreciation of evidence is ordinarily not permitted in Criminal Revision Application unless a very strong case is made out and shows that findings are perverse. It is made out and shown that findings are perverse. It lower Court has taken erroneous view in recording of the findings. The finding of fact cannot be disturbed unless it is found to be illegal and perverse. This can be gathered from a case of Ramaben W/o Amratlal Dayalji Patel vs. State of Gujarat, reported in 1992 (2) GLR P.1530. In the matter of Kantilal Punjaji Chavda vs. Nanubhai Kantilal Chavda, reported in 1992 (2) GLR P.1520 also it has been observed that revisional powers are not Appellate Court powers therefore they cannot be exercised to do injustice.

##. Therefore, looking to the limited scope of this Revision Application it cannot be said that the judgments and orders of the two Courts below are illegal and perverse.

##. At this stage, the learned advocate for the

petitioner has submitted that looking to the nature of evidence produced on record, the sentence of 1 year is too excessive and, therefore, the petitioner may be ordered to undergo sentence already undergone by now. It is also submitted that petitioner has, by now, undergone 1 month or one and half month jail sentence. It is also required to be appreciated that the punishment prescribed for an offence under Section 326 of the I.P.C. is imprisonment for life. While inflicting a particular sentence the Court has to consider the total punishment provided for. In the case before us, four injuries have been caused on the person of Kanubhai, by means of knife and they are found to be grievous in nature. In that view of the matter, sentence of 2 years cannot be said to be on higher side. Really speaking, even if there is an error, the error is on the side of leniency. In that view of the matter, even the sentence is not excessive and hence it cannot be reduced.

##. For the foregoing reasons I find no justification for interference in the judgments recorded by the two Courts below. Therefore, the Revision Application is ordered to be dismissed. The judgments and conviction order, of the two Courts below are confirmed. Rule is discharged. The petitioner is granted time of four weeks for surrender and for filing appropriate proceedings before the appropriate forum. However, the petitioner shall remain present before the trial Court for serving out the sentence on or before 5.3.2002. Intimation to the trial Court with direction to the trial Court to send compliance of this direction to this Court.

##. The learned advocate for the petitioner at this stage request for Certificate for fitness for preferring SLP. Having regard to the facts and circumstances of the case and considering that there are concurrent finding of fact recorded by the two Courts below, this is not found to be fit case for such a request and, therefore, the request is rejected.

(D. P. BUCH, J.)

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